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10                   UNITED STATES DISTRICT COURT  
11                   WESTERN DISTRICT OF WASHINGTON  
12                   AT TACOMA

13                   TOM HAMPTON,

14                   Petitioner,

15                   v.

16                   UNITED STATES OF AMERICA,

17                   Respondent.

Case No.       CR04-5568JET  
                  CR98-5387JET

ORDER ON 2255

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19                   THIS MATTER comes on before the above-entitled Court upon Defendant's Motion  
20 Pursuant to 28 U.S.C §2255, and Motion to File Amended 2255.

21                   Having considered the entirety of the record and files herein, the Court finds and rules as  
22 follows:

- 23                   1.       Defendant filed a Motion to Reopen Judgment and Conviction on August 2, 2004,  
24 and a 2255 motion on August 31, 2004.

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1       2.     The Court stayed proceedings on Defendant's 2255 Motion/Motion to Reopen  
2     pending a ruling in Blakely v. Washington, 124 S.Ct. 2531 (9<sup>th</sup> Cir. 2004). That stay has been  
3     lifted.

4       3.     Defendant's Motion to File an Amended 2255 is DENIED.

5       4.     The Ninth Circuit extended the court's reasoning in Blakely to the federal sentencing  
6     guidelines in United States v. Ameline, 376 F.3d 967 (9<sup>th</sup> Cir. 2004). In United States v.  
7     Booker, 125 S.Ct. 738 (2005), the Supreme Court held that the Sixth Amendment jury trial  
8     requirement as construed by Apprendi and Blakely applied to the federal sentencing  
9     guidelines. Id. at 750. The Court held specific provisions of the guidelines unconstitutional,  
10     making them effectively advisory, rather than mandatory. Id. at 757-769.

11      5.     Defendant filed his 2255 petition more than one year after his conviction became  
12     final. Accordingly, Defendant's 2255 motion is DENIED as untimely. 28 U.S.C §2255 (1).

13      6.     In the alternative, Blakely v. Washington affords Defendant no relief. Defendant's  
14     conviction was final before Blakely and Ameline were decided. The Supreme Court has not  
15     made Blakely retroactive to cases on collateral review. Cook v. United States, 386 F.3d 949  
16     (9<sup>th</sup> Cir. 2004); Guzman v. United States, 2005 WL 803214 (2d Cir. (N.Y.)). Accordingly,  
17     Defendant's Motion pursuant to 28 U.S.C. §2255 is DENIED.

18     In order for an appeal to proceed, this Court must issue a Certificate of Appealability.

19     See 28 U.S.C. §2253; United States v. Asrar, 108 F.3d 217 (9<sup>th</sup> Cir. 1997). For the certificate to  
20     issue, this Court must determine that "the applicant has made a substantial showing of the denial of a  
21     constitutional right" and the Court must "indicate which specific issue or issues satisfy the showing."  
22     28 U.S. C. §2253(c)(2)-(3). If the Court denies the certificate, it must "state the reasons why such a  
23     certificate should not issue." Fed.R.APP.P. 22(b); Asrar, 108 F.3d at 218.

24     For the foregoing reasons, the Court declines to issue a Certificate of Appealability because  
25     Defendant has failed to make "a substantial showing of the denial of a constitutional right." 28  
26     Hampton Order

1 U.S.C. §2253(c)(2).

2 IT IS SO ORDERED.

3 The clerk of the court is instructed to send uncertified copies of this Order to all counsel of  
4 record.

5 DATED this 9<sup>th</sup> day of May, 2005.

6 s/JACK E. TANNER

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8 JACK E. TANNER  
SR. UNITED STATES DISTRICT JUDGE

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Hampton Order